

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLAYTON ROYAL VANHORN,

Defendant-Appellant.

UNPUBLISHED

June 26, 2003

No. 239376

Allegan Circuit Court

LC No. 01-011878-FH

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of second-degree home invasion, MCL 750.110a(3), for which he was sentenced to eighteen months to fifteen years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214 (E)(1)(b).

I. FACTS

Donald Smith testified that he was renting a house from a woman named Shelly. He described the house as “a residence that we’re in the middle of trying to fix it up so we can live in it.” The house was uninsured and evidence indicates that a generator was the sole source of electric power. Regarding the use of the house, Smith testified that he was repairing some interior walls, but had stayed there at night with his dogs. The house was furnished with a TV set, propane fireplace, bed and chairs.

On February 12, 2001, Smith was at the house and left to go to work between noon and 1:00 pm. He returned around 7:00 pm and found signs that the breezeway door had been kicked in. Smith discovered that his generator and bags of dry dog food were missing. Smith said he purchased the Coleman generator, which was mounted on wheels, for \$550. Smith testified that he had not given anyone permission to enter the house and called the sheriff’s department. Deputies arrived and were unable to provide much assistance. Smith tried to investigate the crime on his own.

Neighbors indicated that a small dark pickup had been seen in Smith’s driveway. Through further investigation, Smith came up with defendant’s name from Shelly, who was related to defendant. Smith, his wife, and Shelly, went to Shelly’s uncle’s house the next morning. In the back of a small dark green Ford pickup truck parked in the driveway, Smith saw dog food scattered about. He also testified that there were tire marks that matched the generator

that went back into some barns. Shelly went inside to talk to the occupants. Smith's wife took pictures and when Shelly came out, they left and called the police.

Smith parked down the street from the house and waited for the police. While he was waiting, the pickup truck came out of the house. The generator was in the back of the truck. The driver stopped beside Smith's car and said that he bought it from a friend and did not know it was stolen. The driver returned to the driveway and everyone waited for the police. Someone brought out a hundred-foot roll of fence and said that it was also taken and gave it back to Smith. Smith later discovered that it was missing from his front yard. The police came and arrested the driver and Smith got his generator back.

Freddie Wilkins, Smith's neighbor, said that around 4:00 or 5:00 p.m. on February 12, he noticed a pickup truck coming out of the driveway. He only saw one person in the truck. Before the truck left, Wilkins said the driver, a white male, was at Smith's house for a while and made noise. Wilkins did not do anything because he thought it could be a friend of Smith. Wilkins testified that Smith was not living at his house, but was "trying to get it fixed to live there."

Carolyn Van Patten, the owner of a local store, testified that she knew defendant and his wife, who were regular customers. Defendant drove a small, dark-colored pickup truck. She also knew Smith. On February 12th, defendant came into Van Patten's store "once in the morning and once in the afternoon" around 3:30 pm. Van Patten said that she used to have a customer named Billie McLaughlin but he had not been in her store since last year.

Patrick O'Reilly, an Allegan sheriff's department detective, interviewed defendant on February 13, 2001, in connection with the crime. Defendant said "he had been caught in possession of some stolen property and that he had purchased that property from a Billie McLaughlin for \$25." He identified the property as a generator, dog food and fencing. Defendant did not know about the break in at Smith's home and had not been there. However, he loaned his truck to McLaughlin and suspected that he "may have had his vehicle at that residence that had been broken into."

O'Reilly said that a vehicle part Smith found in his driveway was determined to have come from defendant's truck. "When that particular part fit the suspect's vehicle I went back and re-interviewed Mr. Vanhorn." Defendant "then informed me that he had in fact been at the residence that particular day, that he had taken Mr. McLaughlin over there to the residence for the sole purpose of breaking into the residence and taking the generator." O'Reilly then took a taped statement from defendant.

II. STANDARD OF REVIEW

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to

determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

III. ANALYSIS

Defendant contends that the evidence was insufficient to prove that Smith's house constituted a "dwelling" under the home-invasion statute. We disagree.

The crime of home invasion requires that the defendant break and enter a dwelling or enter a dwelling without permission. MCL 750.110a(3). A dwelling is defined as "a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter." MCL 750.110a(1)(a).

The evidence showed that the structure at issue was a house. It was not occupied on a full-time basis, but the interior was in the process of being prepared for full-time occupancy. The house was not abandoned and was habitable. The lessee had equipped it with some furniture and furnishings as well as a source of heat and electricity. He sometimes spent the night at the house while engaged in the repair work. Such evidence was sufficient to enable a rational trier of fact to conclude that the structure was used "temporarily as a place of abode." *People v McClain*, 105 Mich App 323; 306 NW2d 497 (1981).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette